

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

Section 2614. GOVERNING PROCEDURE FOR NONCOMPLIANCE HEARINGS

INITIAL STATEMENT OF REASONS

File No. RH05048173

Date: July 7, 2006

California Insurance Commissioner John Garamendi will hold a public hearing to consider regulations governing the procedure for noncompliance hearings, specifically considering the adoption of Title 10, California Code of Regulations, Chapter 10, Subchapter 4.3, Article 1, Section 2614. The proposed regulation is entitled: *Governing Procedure for Noncompliance Hearings*.

STATEMENT OF SPECIFIC PURPOSE

California Insurance Code sections 1858, 1858.01, 1858.1 and 1858.2 provide the Commissioner with the authority to conduct public hearings to determine the compliance of insurers, rating organizations, advisory organizations or other organizations with California Insurance code Chapter 9 entitled Rates and Rating and other organizations. However, the Insurance Code does not provide any procedures for conducting such hearings. In order to avoid confusion and promote consistency, the proposed regulation is necessary to set forth the procedures to be used in noncompliance hearings brought pursuant to Insurance Code Sections 1858, 1858.01, 1858.1 and 1858.2.

The proposed regulations simply codify and provide explicitly for procedures already being used in noncompliance hearings and formal adjudications conducted pursuant to the Government Code.

The proposed regulations are also necessary to clarify the governing procedure for litigants and to allow the Department to provide a copy of the governing procedure pursuant to the requirements of Government Code section 11425.10.

Proposed California Code of Regulations section 2614 - Adopt

The proposed subsection provides the definitions to be used throughout the subchapter. The purpose of this section is to clearly define terms as used in the subchapter. This section is necessary to provide consistent definitions for noncompliance hearings and to provide clarity and consistency throughout the subchapter.

Proposed California Code of Regulations section 2614.1 - Adopt

This proposed subsection sets forth the authority of the Administrative Law Judge or Hearing Officer. The purpose of this proposed subsection is to set forth the scope of the Administrative

Law Judge or Hearing Officer's authority. This section is necessary to provide a consistent procedure for noncompliance hearings and to clarify the Administrative Law Judge or Hearing Officer's authority in a noncompliance proceeding.

Proposed California Code of Regulations section 2614.2 - Adopt

The purpose of this proposed subsection is to distinguish between when an enforcement action is commenced and when an administrative proceeding is commenced. The proposed subsection is necessary to provide a consistent procedure for noncompliance hearings and to provide a consistent definition of the terms enforcement action and administrative proceeding in order to avoid confusion.

Proposed California Code of Regulations section 2614.3 - Adopt

The purpose of this proposed subsection is to provide when a notice of noncompliance can be amended or supplemented. This proposed subsection is necessary to provide a consistent procedure for noncompliance hearings and to avoid unnecessary argument about when a notice may be amended or supplemented. The proposed subsection is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.4 – Adopt

The purpose of this proposed subsection is to identify when and how consolidation and bifurcation of a matter may take place. This proposed subsection is necessary to provide a consistent procedure for noncompliance hearings and to provide consistent parameters for the Administrative Law Judge or Hearing Officer's authority in a noncompliance hearing while still providing some manner of discretion. The proposed subsection is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.5 - Adopt

The purpose of this proposed subsection is to provide when and how a continuance may be granted. This proposed subsection is necessary to provide a consistent procedure and to identify the Administrative Law Judge or Hearing Officer's authority in a noncompliance hearing. The proposed subsection is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.6 - Adopt

The purpose of this proposed subsection is to provide which party has the burden of proof and in what order evidence will be presented. This proposed subsection is necessary to provide a consistent procedure and avoid unnecessary argument regarding which party has the burden of proof and how evidence will be presented. The proposed subsection is also necessary to

eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.7 - Adopt

The purpose of this proposed subsection is to provide that the discovery provided in these proposed regulations is the exclusive right to and method of discovery. This proposed subsection is necessary to provide a consistent procedure for prehearing discovery and to avoid unnecessary argument over what discovery is available. The proposed subsection is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.8 - Adopt

The purpose of this proposed subsection is to provide the methods of and timetables for discovery available in a noncompliance proceeding. This proposed subsection is necessary to ensure consistency and that the entities to which this regulation will apply have a clear and concise understanding of the methods of and timetables for discovery in a noncompliance proceeding. The proposed subsection is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.9 - Adopt

The purpose of this proposed subsection is to provide the procedure for compelling discovery. The proposed subsection is necessary to ensure that the entities to which this regulation will apply have a clear and concise understanding of the methods of and timetables for compelling discovery in a noncompliance proceeding. The proposed subsection is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.10 - Adopt

The purpose of this proposed subsection is to provide for prehearing conferences and identify what may be addressed at prehearing conferences. This proposed subsection is necessary so that the entities to which this regulation will apply have a clear and concise understanding of the substance of prehearing conferences. The proposed subsection is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations sections 2614.11 and 2614.12 - Adopt

The purpose of these proposed subsections is to provide the procedure for exchange of witness lists and supplemental witness lists and to identify what information is required to be disclosed. These subsections are necessary so that the entities to which this regulation will apply have a clear and concise understanding of the methods of witness list disclosure. The proposed

subsections are also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations sections 2614.13, 2614.14 and 2615.5 - Adopt

The purpose of these proposed subsections is to provide the methodology by which testimony can be presented at a noncompliance hearing. These proposed subsections are necessary to provide a consistent procedure for noncompliance hearings and to make clear how testimony may be presented at a noncompliance hearing. These proposed subsections are also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.16 - Adopt

The purpose of this proposed subsection is to provide the methodology by which exhibits may be used in a noncompliance hearing. The proposed subsection is necessary to provide a consistent procedure for use of exhibits and is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.17 - Adopt

The purpose of this proposed subsection is to provide the methodology by which oral evidence may be used in a noncompliance hearing. The proposed subsection is necessary to provide a consistent procedure for the use of oral evidence in a noncompliance hearing. The proposed subsection is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.18 - Adopt

The purpose of this proposed subsection is to provide when and how an Administrative Law Judge or Hearing officer may take official notice of something in a noncompliance hearing. The proposed subsection is necessary to provide a consistent procedure for the use of official notice in a noncompliance hearing. The proposed subsection is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.19 - Adopt

The purpose of this proposed subsection is to provide for settlement conferences in a noncompliance proceeding. The proposed subsection is necessary to provide parties the opportunity to partake in settlement conferences during a noncompliance proceeding. The proposed subsection is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.20 - Adopt

The purpose of this proposed section is to provide parameters for settlement of noncompliance proceedings. The proposed subsection is necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate settlement procedures.

Proposed California Code of Regulations section 2614.21 - Adopt

The purpose of this proposed section is to provide how and when additional evidence may be presented in a noncompliance hearing. The proposed subsection is necessary to provide parties with guidance as to how additional evidence may be provided in a noncompliance hearing. The proposed subsection is also necessary to eliminate confusion and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.22 – Adopt

The purpose of this proposed section is to identify when a noncompliance proceeding is submitted for a decision. The proposed subsection is necessary to eliminate confusion in noncompliance proceedings and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.23 - Adopt

The purpose of this proposed subsection is to identify when and how a notice of noncompliance may be amended after a matter has been submitted for decision. The proposed subsection is necessary to identify when additional charges may be made after a matter has been submitted for decision. The proposed subsection is also necessary to eliminate confusion in noncompliance proceedings and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.24 - Adopt

The purpose of this proposed subsection is to provide guidelines, timeframes and procedures for issuing a proposed decision in a noncompliance matter. The proposed subsection is necessary to eliminate confusion, promote consistency in noncompliance proceedings and to conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.25 - Adopt

The purpose of the proposed subsection is to provide timeframes and procedure for a petition for reconsideration. The proposed subsection is necessary to eliminate confusion, promote consistency in noncompliance proceedings and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.26 - Adopt

The purpose of this proposed subsection is to identify when a decision becomes effective. The proposed subsection is also necessary to eliminate confusion, promote consistency in noncompliance proceedings and conserve resources that might otherwise be spent arguing about appropriate procedure.

Proposed California Code of Regulations section 2614.27 - Adopt

The purpose of the proposed subsection is to provide for a default judgment and under what circumstances a default judgment may be taken. The proposed subsection is also necessary to eliminate confusion, promote consistency and to conserve resources that might otherwise be spent arguing about appropriate procedure.

IDENTIFICATION OF STUDIES AND REPORTS

CDI did not rely upon any technical, theoretical and/or empirical study, report or similar document in proposing this regulation.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of the proposed regulation would not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

Performance standards were considered but not practical for regulations governing procedure. The objective identified was fairness and consistency in noncompliance hearings and as such performance standards were rejected because they would be impracticable, vague or otherwise ineffective given the nature of the objective.

Prescriptive standards are more efficient in this context because, unlike performance standards, they provide the affected entities a means of determining with certainty and exactitude the procedures utilized during a noncompliance hearing. Further, the enabling statute requires specific procedures be identified and as such performance standards are not appropriate.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations do not affect small businesses.

Date: _____

JOHN GARAMENDI
Insurance Commissioner

By: _____
Lara Sweat
Staff Counsel